

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY L. TURMAN,

Defendant-Appellant.

UNPUBLISHED

December 18, 2003

No. 240949

Wayne Circuit Court

LC No. 01-009220-01

Before: Fitzgerald, P.J., and Neff and White, JJ.

PER CURIAM.

Defendant appeals as of right from nonjury convictions of possession of 50 grams or more but less than 224 grams of cocaine, MCL 333.7403(2)(a)(iii), and possession of marijuana, MCL 333.7403(2)(d), for which he was sentenced as an habitual offender, third offense, MCL 769.11, to prison terms of ten to twenty years and one to four years, respectively. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends that trial counsel was ineffective for failing to move to suppress the evidence. Because defendant failed to raise this claim below in a motion for new trial or an evidentiary hearing, review is limited to the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). To establish ineffective assistance of counsel, defendant's burden is to show a deficiency in counsel's performance leading to a reasonable probability that the result would have been different. *Id.* at 424.

Officers Smith and Mueller testified that they paced defendant's vehicle and determined that it was traveling in excess of the posted speed limit. They noticed that defendant did not have his seatbelt on and had an object dangling from the rearview mirror. The record thus established that the officers had probable cause to believe that defendant was in violation of MCL 257.628 and MCL 257.710e(3) and may have been in violation of MCL 257.709(1)(c). The stop was therefore permissible. *People v Davis*, 250 Mich App 357, 363-364; 649 NW2d 94 (2002).

Smith testified that upon approaching defendant's car, he saw what appeared to be a marijuana cigarette on the floor board. That created probable cause to believe that defendant was in violation of MCL 333.7403(2)(d). The officers could therefore search the car without a warrant, *People v Kazmierczak*, 461 Mich 411, 418-419; 605 NW2d 667 (2000), and arrest

defendant without a warrant. MCL 764.15(1)(a). Because the police had probable cause to arrest defendant, they could search his person and the passenger compartment of his car, including any containers therein, as an incident to the arrest, even if the search temporally preceded the arrest. *People v Eaton*, 241 Mich App 459, 463; 617 NW2d 363 (2000). Because defendant has not shown that the evidence was illegally seized, counsel was not ineffective for failing to move for suppression. *People v Kulpinski*, 243 Mich App 8, 27; 620 NW2d 537 (2000).

Defendant also contends that counsel was ineffective for failing to move to suppress his statement to the police. Because defendant has not provided any discussion or analysis of the issue, it is deemed abandoned and we therefore decline to consider it. *People v Kent*, 194 Mich App 206, 210; 486 NW2d 110 (1992).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Janet T. Neff

/s/ Helene N. White